

ANALYSIS OF ORIGINAL BILL

Author: Watson Analyst: Kristina North Bill Number: SB 2106

Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: 02/20/98

Attorney: Doug Bramhall Sponsor:

SUBJECT: 2000 Campaign Financing Reform Act/Legislative Election Fund

SUMMARY

Under the Administration of Income and Franchise Law (AFITL), this bill would establish the Legislative Election Fund (LEF).

This bill also would repeal the provisions of the Political Reform Act of 1974 prohibiting public officers from expending and candidates from accepting public moneys to seek elective office and add the Campaign Financing Reform Act of 2000. This bill would require the FTB to conduct additional audits. The bill's provisions will be addressed in this analysis only to the extent that they impact the Franchise Tax Board (FTB).

EFFECTIVE DATE

This bill would become effective January 1, 2001, if voters approve its provisions on November 7, 2000, at the statewide general election. The Campaign Financing Reform Act of 2000 would become operative on July 1, 2001, upon the Controller's determination whether the amount of money in the LEF is \$20 million. This bill also requires that the LEF first appear on the 1998 tax return.

LEGISLATIVE HISTORY

SB 1953 (1997), SB 752, AB 2871 (1995/96), SB 588 (1994)

BACKGROUND

The California Election Campaign Fund (the first voluntary contribution fund) was enacted in 1982 and was first available for contributions on the 1982 tax return filed in 1983. It sunset on January 1, 1997, and last appeared on the 1996 tax return. This fund received approximately \$95,532 from contributions on 1996 tax returns.

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___X___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
Gerald H. Goldberg 4/6/98

Agency Secretary Date

By: Date

SPECIFIC FINDINGS

Existing federal law provides a true checkoff to direct \$3 (\$6 for married individuals filing jointly) of a taxpayer's actual tax liability to the Presidential Election Campaign Fund. Designation of the \$3 does not affect a taxpayer's tax liability or refund amount.

Current state law does not allow taxpayers to direct actual tax liability to any fund. **Current state law** allows taxpayers to make contributions of their own funds, not tax liability, to 10 voluntary contribution funds on the 1997 tax return filed in 1998.

Current state law, under the Political Reform Act of 1974, requires the FTB to audit political committees, lobbyists, lobbyist employers, and political candidates, including those campaigning for the Legislature, constitutional or local government offices. Generally, 25% of candidates whose contributions exceed established amounts are audited on a random sample basis. If contributions are less than \$15,000, a 10% random sample audit is required for Supreme Court, Courts of Appeal, and Board of Equalization candidates.

This bill would establish the LEF, administered by the Controller, allowing individual taxpayers to designate \$5 (\$5 each for married individuals filing jointly) of tax liability to the fund provided the taxpayer's income tax liability is \$5 or more. The LEF would provide public funding to certain political party nominees who are candidates for the Assembly, Senate, Board of Equalization and statewide offices in the primary and general elections, as specified.

This bill defines "income tax liability" as the amount of taxes imposed by the AFITL, minus all credits allowed by the AFITL, except specified Personal Income Tax Law (PITL) credits (the Renter's Credit, the Withholding Credit and the Excess Tax Credit) and the payment of estimated tax.

This bill would require the FTB to revise all original personal income tax forms (which include the 540, 540A, 540EZ, Telefile, 541, 540NR and scannable forms) for the 1998 tax year and thereafter to include the LEF designation. Specifically, this bill would require that, on the first page, immediately preceding the filing status, language be included to allow each individual taxpayer to designate \$5 of tax liability to the fund. This bill also would require that tax returns specify that the designation would not increase a taxpayer's tax liability or reduce a refund.

This bill would require the FTB to notify the Controller of money designated to the LEF as the income tax returns are received from taxpayers. The Controller would be required to transfer to the LEF an amount equal to the amounts designated by taxpayers.

This bill would compensate the Controller and the FTB from the LEF for reasonable administrative expense connected with the fund's operation if the voters approve the adoption of the Campaign Financing Reform Act of 2000.

This bill would require the FTB to perform audits and field investigations, in conjunction with existing law. No audit or investigation of a candidate or committee regarding a report or statement could begin until after the last filing date for the first report or statement following the general, runoff, or special election for the office for which a candidate ran. In addition to the required audits and investigations, the FTB and the Fair Political Practices Commission (FPPC) could make investigations and audits with respect to reports or statements required by this chapter. The FTB must periodically prepare reports of FTB's findings, which would become public documents, for the FPPC, the Secretary of State and the Attorney General. No FTB member, employee or agent of the FTB can disclose any particulars of any such record.

Implementation Considerations

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and any other concerns that may be identified.

- ◆ Section 4 of this bill would require the LEF be placed on the 1998 tax return. However, this conflicts with Section 7, which provides that the LEF provision would become effective January 1, 2001, but would become inoperative if the voters do not approve the public campaign funding provisions in the 2000 statewide general election. Additionally, Section 5 requires that, for the Campaign Financing Reform Act of 2000 to become operative, the Controller must determine on July 1, 2001, whether the amount in the LEF is \$20 million or more. The act would become operative on the date the Controller makes that determination regardless of the amount in the LEF. These language conflicts must be resolved before the department could implement the LEF.
- ◆ This bill would require the FTB to notify the Controller of money designated to the LEF "as the income tax returns are **received** from taxpayers." It is unclear if the author intended a new process be created to meet this requirement, which could be excessively burdensome to both the Controller and the FTB, or if the existing process by which the FTB regularly notifies the Controller of other, similar information would be sufficient.
- ◆ This bill does not specify what should occur if no tax liability exists at the time a designation was made or if an audit reveals a tax liability did not exist. This bill does not provide authority to disregard inappropriate designations or to recapture designations where a tax liability was found nonexistent.
- ◆ This bill places the designation above the filing status before "income tax liability" could be determined, forcing a taxpayer to complete the tax form in nonsequential steps. Additionally, to determine eligibility for this credit, this bill would require taxpayers to calculate "income tax liability" pursuant to this bill, making a new worksheet or schedule necessary.

- ◆ This bill would require the FTB and the Controller to be reimbursed for all costs incurred in connection with this fund if voters approve the adoption of the Campaign Financing Reform Act of 2000. However, if the intent is to allow designations to the fund on 1998 and 1999 tax returns, no reimbursements would be provided for costs incurred prior to the November 7, 2000, election.
- ◆ This bill specifies that the LEF designation be placed on the first page on all original returns immediately preceding the filing status. That would require three additional lines be added to all individual tax returns and additional instructional text. This requirement, coupled with the return of the renter's credit, could create significant implementation problems. Programming and testing would be required to accommodate the new designation.
- ◆ Including this designation on all original personal income tax returns would be a significant change for all taxpayers. It has been the department's experience that, when a tax law change impacts a significant number of taxpayers, taxpayer contact with the department increases.
- ◆ In addition to the other audits authorized by the Political Reform Act of 1974, during the 1996/97 (two-year) election audit cycle, the department completed 25 Senate audits and 70 Assembly audits. Because of the contribution limits proposed by this bill, the complexity and length of Senate and Assembly audits would increase. Additionally, the number of candidates for mandatory audits is expected to increase since the public funding provisions may attract additional candidates. It is projected that the Senate audits would increase by five and the Assembly audits would increase by 30.

Technical Consideration

This checkoff is located in the AFITL (Part 10.2 of the Revenue and Taxation Code) and this bill defines "income tax liability" as the amount of taxes imposed by "this part" (meaning the AFITL). However, taxes are imposed on individuals under Part 10 (Personal Income Tax Law). The reference to "this part" should be changed to reference part 10.

FISCAL IMPACT

Departmental Costs

Until implementation concerns are resolved, it is difficult to determine departmental costs.

Tax Revenue Estimate

Revenue losses under the Personal Income Tax Law are estimated to be as follows:

Effective 2000 Taxable Year (in millions)		
Fiscal Years		
2000/01	2001/02	2002/03
(\$13)	(\$14)	(\$14)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Tax Revenue Discussion

This estimate is based on federal experience with the Presidential Election Campaign Fund and assumes implementation concerns addressed in this analysis have been resolved. Pursuant to our latest available data (taxable year 1992), 17% of all taxable federal returns included designations to the Federal Presidential Election Campaign Fund. This percentage has been fairly stable from year to year. It is assumed that the same ratio of California taxpayers would make the Legislative Election Fund designations, i.e., around 850,000 joint filers at \$10 each and 950,000 other filers at \$5 each (year 2000 level).

BOARD POSITION

Pending.